

REMARKS

Claims 1-3 and 5-9 remain pending. Reconsideration of the application is respectfully requested.

Claims 1-3 and 5-9 were rejected under 35 U.S.C § 103(a) as obvious over Siess et al. (WO 2002/043791 per U.S. Pub. No. 2004/0044266) in view of Sammler et al. (USPN 6,544,216) and further in view of Garcia (USPN 5,037,403). The Examiner acknowledges that the primary reference fails to suggest the use of a spacer element for maintaining **inlet** openings spaced apart from adjacent heart walls and then attempts to overcome such shortcomings by relying on two secondary references that show elements positioned adjacent **outlet** openings. Not a single one of the three references that is being relied upon suggests the positioning of any spacing device adjacent to the **inlet** openings, consequently no combination of their teaching can be characterized as doing so.

Moreover, the guide element described in the Sammler reference in fact comprises a balloon that is intended to pull the canula to which it is attached along the direction of blood flow. Positioning such balloon adjacent an inlet opening would defeat the intended purpose and could conceivably cause the balloon to be drawn back toward such opening to block the opening. It is to be noted that both the balloon as well as the flexible catheter to which it is attached are both integral parts of the guide element, wherein the flexible catheter 48 merely serves as a link between the balloon and the canula to enable the balloon to pull the canula along behind it. In the rejection, the Examiner is in essence asserting that it would be obvious to disassemble a component of the secondary reference that is not intended to nor even capable of preventing contact between the described device's inlet port and heart wall, select an element thereof that happens to have an "outer diameter that is smaller than the cannula," and transplant such element onto the device of the primary reference, a reference which does not address or even recognize the need to space the inlet openings apart from the heart wall so as to prevent the openings from being sucked up against the heart wall.

The Examiner further acknowledges that neither the primary reference nor Sammler discloses a pigtail tip and then asserts that it would be obvious to "modify Sammler to have a pigtail tip" as per Garcia. It should initially be noted that modifying Sammler in accordance with the Examiner's suggestion (in the event the Examiner is in fact suggesting the substitution of the

pigtail for the entire guide element, i.e. catheter 48 in addition to the balloon 35a), would defeat the stated purpose of the Sammler device as the pigtail by itself would not be expected to be capable of pulling the canula along the direction of blood flow. On the other hand, if the Examiner is suggesting that the balloon is to be retained, it is not clear what the motivation would be to merely exchange a pigtail for the catheter 48 as it is the balloon rather than its link to the canula that would be expected to make any contact with tissue. It is additionally to be noted that like Sammler, the Garcia reference teaches attaching a projection to the canula adjacent its outlet end and thereby precludes any possibility of maintaining inlet openings spaced apart from heart tissue as is explicitly claimed in the rejected claims. Furthermore, while the Examiner asserts that the minimizing of trauma is a predictable result, the result that is in fact provided by the present invention is preventing the inlet openings from being sucked up against heart tissue, a result that is not even contemplated by any of the three references.

It is respectfully submitted that the Examiner has not provided a sufficient reason or explicit analysis of why the disclosures of the references **should be** combined in view of primary reference's failure to even recognize the problem that is being solved by the present invention and the secondary references' resolution of completely different problems. Clearly the present invention is being used as a roadmap as to how to combine various elements of the cited references to arrive at the claimed structure. Any predictability of result arises only **after** the elements have been combined pursuant to the teaching of the present invention rather than due to any teaching, suggestion, motivation or rationale presented in any of any of the cited references. It is therefore respectfully submitted that obviousness is effectively avoided.

In light of the above remarks, applicant earnestly believes the application to now be in condition for allowance and respectfully requests a timely disposition thereof.

The commissioner is authorized to charge any deficiencies in fees or credit any overpayments to our Deposit Account No. 06-2425.

Respectfully submitted,

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